

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

GRAND CENTRAL SANITARY LANDFILL, INC.<sup>1</sup>

Employer

and

Case 4–RC–21157

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 542, AFL-CIO

Petitioner

**REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

The Employer, Grand Central Sanitary Landfill, Inc., a wholly-owned subsidiary of Waste Management, Inc., operates a landfill in Pen Argyl, Pennsylvania. The Petitioner seeks to represent eight Operators employed at this landfill, asserting that these employees constitute a craft unit. The Employer contends that the Operators are not an appropriate craft unit and that the smallest appropriate unit including the Operators must also encompass 12 other employees working in six additional job classifications.

A Hearing Officer of the Board held a hearing in this matter, and the parties filed briefs. I have considered the evidence and the arguments presented by the parties and have concluded that the Employer's Operators are not a separate craft unit and do not share a community of interest distinct from the Employer's other employees. As explained below, I find that the smallest appropriate unit at the Employer's landfill must also include employees classified as Weighmasters, Spotters, Water Truck Drivers, Water Tanker Drivers, Laborers, and Mechanics.

In this Decision, I will first present the relevant facts. Then, I will review the factors that must be evaluated in determining the appropriate unit at the Employer's facility. Finally, I will explain the reasoning that supports my conclusions.

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

## **I. FACTS**

### **Background**

The Employer employs 20 employees at the Pen Argyl landfill, including eight Operators, four Laborers, two Water Truck Drivers, a Water Tanker Driver, two Mechanics, two Weighmasters, and a Spotter. These employees are responsible for day-to-day waste disposal at the landfill.<sup>2</sup> The landfill is normally open from 6:30 a.m. to 6:30 p.m., but some employees begin work as early as 5:30 a.m.

Scott Perin is the District Manager in charge of the Pen Argyl site. Three supervisors, Marvin Brodt, Cory Smith, and Mike Markovitz, report to Perin. Brodt supervises the Operators, Laborers, Drivers, and Spotter, while Smith supervises the Weighmasters, and Markovitz supervises the Mechanics.

### **Employee Classifications**

#### *Operators*

The Operators run the heavy equipment used at the site, primarily bulldozers and compactors. The bulldozers are used to push trash into holes, arrange it in terraces, and cover it with dirt. The compactors compress the trash after it has been placed in the proper spot. Compactors are easier to operate than bulldozers, and one of the Operators, a trainee, is assigned to run only compactors.

Operators are assigned to staggered shifts. Some Operators arrive at 5:30 a.m. and leave at 4:30 p.m. A second shift appears at 6 a.m. and departs at 5 p.m. The third shift works from 7:30 a.m. to about 6:30 p.m.

The Employer posts open Operator positions and gives employees in other classifications an opportunity to fill the jobs before seeking outside help, and three of the eight Operators transferred from other classifications. One of these employees moved from a "Utility" position in which he spent half of his time as an Operator and the remainder as a Laborer. If no in-house candidate is interested, the Employer places newspaper advertisements seeking Operators. Experienced Operators are difficult to find, and the Employer is normally obliged to hire individuals with little or no equipment operating experience. In this connection, only one of the Employer's current Operators had extensive experience with heavy equipment before being hired. The remaining Operators either worked as truckdrivers or had run heavy equipment for just a few months before starting work for the Employer.

The Employer has no formal training program for Operators. All new employees including Operators receive a one-week orientation. Supervisor Brodt then shows newly-hired Operators how to run the Employer's equipment and observes them to make certain their

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<sup>2</sup> The Employer subcontracts the work of excavating and lining the holes at the landfill into which waste is dumped. It also subcontracts the capping and landscaping of the site once the holes are filled.

performance is acceptable. Operators can learn to run the equipment in just a few hours, although it may take them as much as six months to become fully proficient. No special licenses are required to operate the Employer's equipment.

Employees in other classifications fill in when Operators are absent, which occurs about four times per month. Operators sometimes work as Laborers or in the scalehouse if their equipment is in the shop for repairs.

### *Weighmasters*

Upon arrival at the site, vehicles carrying waste stop at the scalehouse, where Weighmasters weigh them and record information about their loads. Some incoming vehicles carry waste that requires special handling, such as sewage sludge or industrial waste, and the Weighmasters contact either the Operators or the Spotter when these vehicles arrive so that necessary arrangements can be made. One Weighmaster works from 6:15 a.m. to 2:30 p.m., and the other works from 8 a.m. until the landfill closes at about 6:30 p.m. One of the Drivers assists the Weighmasters during morning hours and substitutes for Weighmasters who are absent or on vacation.

### *Spotter*

The Spotter works from a portable shed located about 50 to 100 feet from the hole into which trash is being dumped. His job is to coordinate with the Operators to determine when it is appropriate for vehicles to drive to the hole to dump their wastes. The Spotter has regular contact with the Operators via radio or Nextel phone. He is present from 7:00 a.m. to 5:00 p.m., and Operators perform the Spotter function during the period prior to his arrival. The individual currently serving as Spotter previously worked as an Operator.

### *Drivers*

The Water Truck Driver and Water Tanker Drivers spray water on access roads to help control dust and spray an odor-controlling chemical on the area into which trash is being dumped. Either the Operators or the Spotter contact the Drivers if they believe an area needs to be sprayed. The Drivers begin work at either 6:30 a.m. or 7:00 a.m.

### *Laborers*

Laborers pick up trash which escapes from the dump site and deposit the trash in plastic bags. These bags are then placed in a front-end loader and returned to the dump site. The loader is often driven by an Operator but may be driven by a Laborer if no Operator is available. Laborers also clean the Employer's buildings and equipment. Operators communicate with Laborers to make certain the Laborers are not in an area where trash is being dumped or equipment operated. Laborers work from 7:00 a.m. to 4:00 p.m.

### *Mechanics*

The Mechanics repair the trucks and equipment used at the site. Minor repairs are performed at the dump site, while major repairs are performed in a shop located near the scalehouse. Operators contact Mechanics if their equipment needs service and may assist the Mechanics in making repairs. Mechanics are typically present from 7:30 a.m. to 4:30 p.m. or 5:00 p.m.

### **Working Conditions**

All employees receive the same fringe benefits, are subject to the same rules, and attend the same safety training sessions. A breakroom used by all employees is located in the scalehouse, and all employees punch in and out on a timeclock in the breakroom. The employees wear the same uniforms. District Manager Perin evaluates all employees and determines the amounts of wage increases. Perin must approve any disciplinary action.

Operators are paid between \$14.56 and \$17.17 per hour. Laborers are paid between \$13 and \$13.24 per hour. Drivers receive between \$14.09 and \$16.77 per hour. Weighmasters are paid from \$15.45 to \$17 per hour. Wage rates for Mechanics range from \$19.75 to \$20.29 per hour.<sup>3</sup>

### **Bargaining History**

In August 2001, the Petitioner was certified as the representative for a unit encompassing employees in all of the classifications at issue in this case. The parties agreed on a contract in May 2002, which contained a Union security clause. In October 2003, the Petitioner disclaimed interest in representing the Employer's employees following a deauthorization vote.

The Petitioner represents a unit of employees at another landfill in Pennsylvania, which is owned by a different subsidiary of Waste Management. It also represents employees at a mine run by a third Waste Management subsidiary. Operators are included with other employees in the bargaining units at these facilities.

## **II. RELEVANT LEGAL STANDARDS**

The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, the inquiry ends. *American Hospital Association v. NLRB*, 499 U.S. 606, 610 (1991); *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See *The Boeing Co.*, 337 NLRB 152, 153 (2001); *Bartlett Collins Co.*, 334 NLRB 484 (2001). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See

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<sup>3</sup> The record does not indicate the Spotter's wage rate.

*Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). It is well settled that the unit need only be *an* appropriate unit, not the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd.* on other grounds 190 F.2d 576 (7th Cir. 1951).

The touchstone for determining whether a bargaining unit is appropriate is a community-of-interest analysis. In determining whether a group of employees possesses a community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, skills, and job functions, employee contact and interchange, and similarities in wages, hours, benefits, and other terms and conditions of employment. See *Home Depot USA*, 331 NLRB 1289 (2000); *Esco Corp.*, 298 NLRB 837 (1990).

Section 9(b) of the Act makes reference to “craft units” as potentially appropriate for purposes of collective bargaining.<sup>4</sup> The Board has defined a craft unit as a distinct and homogeneous group of journeymen, apprentices, and helpers who are primarily engaged in tasks not performed by others that require substantial craft skills and the use of specialized tools and equipment. *CCI Construction Co.*, 326 NLRB 1319, 1323 (1998); *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994). In determining whether a petitioned-for craft unit is appropriate, the Board examines: (1) whether the employees take part in a formal training or apprenticeship program; (2) whether the work is functionally integrated with the work of excluded employees; (3) whether the duties of petitioned-for employees overlap with the duties of excluded employees; (4) whether the employer assigns work according to need rather than on craft or jurisdictional lines; and (5) whether the petitioned-for employees share common interests with other employees. *The Mirage Casino Hotel*, 338 NLRB 529, 532 (2002); *Schaus Roofing*, 323 NLRB 781 (1997).

### III. ANALYSIS

I find that the Employer’s Operators do not constitute either a craft unit or a separate appropriate bargaining unit. I reach this conclusion for a number of reasons.

First, the Operators do not take part in any formal training or apprenticeship program. Supervisor Brodt briefly describes for new Operators how the Employer’s equipment works and then leaves them to run it. No period of extensive training is provided, and none seems to be required. Operators are able to perform adequately after just a few hours on the job, and they become proficient within six months. Further, new Operators are not required to have extensive experience operating equipment in order to secure employment. Most of the Employer’s Operators were either transferred from other positions within the company or hired off-the-street with little or no experience running heavy equipment. Thus, they do not possess skills acquired through a period of apprenticeship or formal training that are characteristic of craft unit employees. Compare *Burns & Roe Services Corp.*, *supra*.

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<sup>4</sup> It states in relevant part, “The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, *craft unit*, plant unit, or subdivision thereof. . . .” [Emphasis added].

Second, the work of the Operators is functionally integrated with the work of employees in other classifications, and there is some overlap of duties between Operators and other employees. Weighmasters identify for the Operators the type of waste being carried by vehicles entering the Employer's facility so that the Operators can determine the proper method of disposal. The Spotter regulates traffic to the dump site at which the Operators perform their functions. The Mechanics maintain and repair the equipment used by the Operators, sometimes at the Operators' request and with the Operators' assistance. Operators may tell Water Truck Drivers and Water Tanker Drivers where to spray in order to minimize dust and odor at the dump site, and they run the front-end loader into which the Laborers deposit trash. Moreover, employees in other classifications regularly fill in for Operators and have permanently transferred into Operator positions. One Operator transferred into the Spotter job, and several Operators previously served in other capacities at the landfill.

Third, the Operators have common interests with other employees. They share immediate supervision with the Drivers, Laborers, and Spotter. While the Weighmasters and Mechanics have different immediate supervisors, they have the same overall supervisor in District Manager Perin, who plays an active role in evaluating and disciplining workers. The rates of pay for Operators are comparable to those received by employees in all other classifications with the exception of the Mechanics. All of the employees receive the same benefits and wear the same uniforms. They receive the same orientation, attend the same safety training, and are subject to the same rules. In short, the conditions under which employees in the various classifications work are largely identical, a factor which strongly supports their inclusion in a single bargaining unit.

Finally, there is a history of bargaining in a unit combining Operators with other employees. The Petitioner was certified in such a unit in August 2001, negotiated a contract, and represented employees through October 2003. While not determinative, this is a factor supporting inclusion of the Operators in a unit with other employees. *Buckeye Village Market, Inc.*, 175 NLRB 271, 272 (1969).<sup>5</sup>

The only factor in this case lending support to finding appropriate a separate Operator unit is the distinct duties performed by the Operators. Although employees in other classifications substitute for Operators at times and have permanently transferred into Operator positions, the day-to-day tasks performed by Operators are different than the tasks handled by other employees. Thus, the Operators regularly run bulldozers and compactors, while at most,

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<sup>5</sup> The Petitioner contends that since the Petitioner only had a contract covering a larger unit at this facility for about 14 months, this bargaining history is too brief to be a significant factor. However, the Petitioner represented the employees for more than two years, and as noted in *Buckeye Village Market*, above, at 272 fn. 8, the Board has relied on bargaining histories of even shorter duration in determining the appropriateness of bargaining units. See *Gould-National Batteries, Inc.*, 150 NLRB 418 (1964); *Robert Hall Clothes, Inc.*, 118 NLRB 1096 (1957).

The Employer claims that there was a practice of Operators being included in larger landfill bargaining units represented by the Petitioner. To support this claim, it provided evidence that a unit represented by the Petitioner at a landfill operated by another Waste Management subsidiary included both Operators and other employees. This lone example of Operator inclusion in a broader unit, however, is insufficient to establish a meaningful practice.

other employees run such equipment on an occasional basis. However, I find this distinction insufficient to justify a separate Operators unit. Instead, considering all of the above factors, I find that Operators are not crafts employees with skills sufficiently developed to compel separate representation, but are specialized employees who adapt to the particular requirements of the Employer's operation. *Monsanto Co.*, 183 NLRB 415, 417 (1970); *Timber Products Co.*, 164 NLRB 1060, 1064 (1967).<sup>6</sup>

In summary, the evidence in this case fails to establish that the requested unit is a craft unit, because the Operators have no formal training or apprenticeship program, their work is functionally integrated with the work of other classifications, they have some overlapping duties with other classifications, and they share significant common interests with other employees. The record also fails to show that the Operators have a distinct community of interest from other employees, because they have significant functional integration, contact and interchange, and they share common supervision and similar wages, benefits, and other terms and conditions of employment with employees in other classifications. Thus, the smallest appropriate unit in this case must encompass all employees directly involved in the Employer's landfill operation, including Laborers, Water Truck Drivers, Water Tanker Drivers, Spotters, Weighmasters, and Mechanics with the Operators. *Brand Precision Services*, 313 NLRB 657 (1994); *Longcrier Co.*, 277 NLRB 570, 571 (1985).

#### **IV. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

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<sup>6</sup> In contrast, in *Dick Kelchner Excavating Co.*, 236 NLRB 1414 (1978), equipment operators were found to constitute a separate appropriate unit, along with skilled mechanics, where their work required a high degree of skill and special training and they were paid a substantially higher wage rate than other employees.

All full time and regular part-time Operators, Weighmasters, Spotters, Water Truck Drivers, Water Tanker Drivers, Laborers, and Mechanics employed at the Employer's Pen Argyl, Pennsylvania facility; **excluding** all other employees including Gas and Water Treatment Plant employees, office clerical employees, guards and supervisors as defined in the Act.

At the hearing, the Petitioner reserved decision on whether it was willing to proceed to an election in a unit other than the petitioned-for unit, and its showing of interest may now be inadequate due to the additional employees included in the unit as a result of this Decision. Accordingly, the Petitioner should advise the undersigned Regional Director as to whether or not it wishes to proceed to an election in the unit found appropriate, and the Petitioner has 14 days from the issuance of this Decision to augment its showing of interest, if necessary. See *NLRB Casehandling Manual (Part Two), Representation Proceedings*, Sec. 11031.2. If the Petitioner fails to submit an adequate showing of interest within this period, or to withdraw the petition, the petition will be dismissed without further order. The Direction of Election set forth below is thus conditioned on the Petitioner having an adequate showing of interest. See *Alamo Rent-A-Car*, 330 NLRB 897 (2000). In the event that a request for review is filed with respect to this Decision, the foregoing requirement will be suspended until the Board rules on the request for review.

## **V. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by the **International Union of Operating Engineers Local 542, AFL-CIO**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Eligible Voters**

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility; 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and 3) employees engaged in an economic



strike which began more than 12 months before the election date who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election only after I shall have determined an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **June 8, 2006**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658, or by e-mail to [Region4@NLRB.gov](mailto:Region4@NLRB.gov).<sup>7</sup> Since the list will be made available to all parties to the election, please furnish a total of two (2) copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

**C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so stops employers from filing objections based on non-posting of the election notice.

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<sup>7</sup> See OM 05-30, dated January 12, 2005, for a detailed explanation of requirements which must be met when submitting documents to a Region's electronic mailbox. OM 05-30 is available on the Agency's website at [www.nlr.gov](http://www.nlr.gov).

## **VI. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by e-mail. For details on how to file a request for review by e-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EDT on **June 15, 2006**.

Signed: June 1, 2006

at Philadelphia, Pennsylvania

/s/ [Dorothy L. Moore-Duncan]  
DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four